

X FILED LODGED
RECEIVED COPY

1 MICHAEL BAILEY
2 United States Attorney
3 District of Arizona
4 MONICA E. RYAN
5 Assistant U.S. Attorney
6 United States Courthouse
405 W. Congress Street, Suite 4800
Tucson, Arizona 85701
Telephone: 520-620-7300
Email: monica.ryan@usdoj.gov
Attorneys for Plaintiff

August 8, 2019

CLERK US DISTRICT COURT
DISTRICT OF ARIZONA
S. G. Fuller

BY DEPUTY

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 United States of America,
10 Plaintiff,
11 vs.
12
13 Matthew Bowen,
14 Defendant.

CR-18-01013-CKJ (DTF)
PLEA AGREEMENT

15 The United States of America and the defendant agree to the following disposition
16 of this matter:

17 1. The defendant agrees to plead guilty to an Information, which charges the
18 defendant with a violation of 18 U.S.C. § 242, Deprivation of Rights Under Color of Law,
19 a Class A Misdemeanor.

20 2. The essential elements of the charge to which the defendant is pleading guilty
21 are:

- 22 a. The defendant was acting under color of law;
23 b. The defendant deprived a person of a right secured by the Constitution
24 and laws of the United States; and
25 c. The defendant acted wilfully.

27
28

TERMS

2 3. The defendant understands that this guilty plea is conditioned upon the
3 following terms, stipulations, and requirements:

Maximum Penalties

4. The maximum penalties for a misdemeanor violation of 18 U.S.C. § 242 are
a fine of \$100,000, a term of imprisonment of 1 year, or both, and a period of not more
than one year of supervised release. Probation is authorized for not more than 5 years. (18
U.S.C. § 3561(c)(2)).

9 5. Pursuant to Title 18, United States Code, Section 3561, et seq., at the sole
10 discretion of the Court, and even if probation is available, the defendant instead may be
11 sentenced to a term of imprisonment.

12 6. Pursuant to Title 18, United States Code, Sections 3663A(a)(1) and
13 3771(a)(6), victims are entitled to mandatory restitution, and the PSR will include an
14 assessment regarding restitution if restitution is owing.

15 7. Pursuant to the Sentencing Guidelines issued pursuant to the Sentencing
16 Reform Act of 1984, the court shall:

17 (a) order the defendant to make restitution to any victim of the offense unless,
18 pursuant to Title 18, United States Code, Section 3663 and Section 5E1.1 of the Guidelines,
19 the court determines that restitution would not be appropriate in this case;

24 8. Pursuant to 18 United States Code, Section 3013, the defendant shall pay a
25 special assessment of \$25.00. The special assessment is due and payable at the time the
26 defendant enters the plea of guilty, but in no event shall be paid later than the time of
27 sentencing unless the defendant is indigent. If the defendant is indigent, the special

1 assessment will be collected according to the provisions of Chapters 227 and 229 of Title
2 United States Code.

3

4 Agreements Regarding Sentence

5 9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), in exchange for defendant's guilty
6 plea to the misdemeanor violation, the parties agree to a sentencing range of 0-12 months
7 imprisonment, and that the government will not make a sentencing recommendation
8 regarding imprisonment or probation. The defendant agrees that he will resign from the
9 United States Border Patrol, and that he will submit his letter of resignation to the Border
10 Patrol immediately following the change of plea hearing. The Indictment will be dismissed
11 at sentencing.

12 10. If the Court, after reviewing this plea agreement, concludes that any
13 provision is inappropriate, it may reject the plea agreement under Rule 11(c)(5), Fed. R.
14 Crim. P., giving the defendant, in accordance with Rule 11(d)(2)(A), Fed. R. Crim. P., an
15 opportunity to withdraw the defendant's guilty plea.

16 11. The defendant and the government agree that this agreement does not in any
17 manner restrict the actions of the government in any other district or bind any other United
18 States Attorney's Office.

19

20 Waiver of Defenses and Appeal Rights

21 12. The defendant waives any and all motions, defenses, probable cause
22 determinations, and objections that the defendant could assert to the information or
23 indictment, or to the Court's entry of judgment against the defendant and imposition of
24 sentence upon the defendant providing the sentence is consistent with this agreement. The
25 sentence imposed is consistent with the terms of this agreement provided the defendant
26 receives a sentence of 12 months imprisonment or less. The defendant further waives: (1)
27 any right to appeal the Court's entry of judgment against defendant; (2) any right to appeal
28 the imposition of sentence upon defendant under 18 U.S.C. § 3742 (sentence appeals); (3)

1 any right to appeal the district court's refusal to grant a requested variance; (4) any right to
2 collaterally attack defendant's conviction and sentence under 28 U.S.C. § 2255, or any
3 other collateral attack; and (5) any right to file a motion for modification of sentence,
4 including under 18 U.S.C. § 3582(c). The defendant acknowledges that this waiver shall
5 result in the dismissal of any appeal or collateral attack the defendant might file challenging
6 his/her conviction or sentence in this case. If the defendant files a notice of appeal or a
7 habeas petition, notwithstanding this agreement, defendant agrees that this case shall, upon
8 motion of the government, be remanded to the district court to determine whether
9 defendant is in breach of this agreement and, if so, to permit the government to withdraw
10 from the plea agreement. This waiver shall not be construed to bar a claim by the defendant
11 of ineffective assistance of counsel or of "prosecutorial misconduct" (as that term is defined
12 by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

13

14 Reinstitution of Prosecution

15 13. If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by
16 any court in a later proceeding, the government will be free to prosecute the defendant for
17 all charges as to which it has knowledge, and any charges that have been dismissed because
18 of this plea agreement will be automatically reinstated. In such event, defendant waives
19 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth
20 Amendment to the Constitution as to the delay occasioned by the later proceedings.

21

22 Disclosure of Information to U.S. Probation Office

23 14. The defendant understands and agrees to cooperate fully with the United
24 States Probation Office in providing: (a) all criminal history information, i.e., all criminal
25 convictions as defined under the Sentencing Guidelines; (b) all financial information, i.e.,
26 present financial assets or liabilities that relate to the ability of the defendant to pay a fine
27 or restitution; (c) all history of drug abuse which would warrant a treatment condition as
28

part of sentencing; and (d) all history of mental illness or conditions which would warrant a treatment condition as a part of sentencing.

Effect on Forfeiture Proceedings

5 15. Nothing in this agreement shall be construed to protect the defendant from
6 civil forfeiture proceedings or prohibit the United States from proceeding with and/or
7 initiating an action for civil forfeiture. Further, this agreement does not preclude the United
8 States from instituting any civil proceedings as may be appropriate now or in the future.

WAIVER OF DEFENDANT'S RIGHTS AND FACTUAL BASIS

Waiver of Rights

12 16. I have read each of the provisions of the entire plea agreement with the
13 assistance of counsel and understand its provisions. I have discussed the case and my
14 constitutional and other rights with my attorney. I understand that by entering my plea of
15 guilty I will be giving up my rights as follows: to plead not guilty; to trial by jury; to
16 confront, cross-examine, and compel the attendance of witnesses; to present evidence in
17 my defense; to remain silent and refuse to be a witness against myself by asserting my
18 privilege against self-incrimination; all with the assistance of counsel; to be presumed
19 innocent until proven guilty beyond a reasonable doubt; to a restitution schedule set by the
20 Court for payment of restitution during any period of incarceration; and, to appeal or file
21 any other challenge to my conviction or sentence.

17. I agree to enter my guilty plea as indicated above on the terms and conditions
set forth in this agreement.

24 18. I have been advised by my attorney of the nature of the charge to which I am
25 entering my guilty plea. I have been advised by my attorney of the nature and range of the
26 possible sentence, and that I will not be able to withdraw my guilty plea if I am dissatisfied
27 with the sentence the court imposes.

1 19. My guilty plea is not the result of force, threats, assurance or promises other
2 than the promises contained in this agreement. I agree to the provisions of this agreement
3 as a voluntary act on my part and I agree to be bound according to its provisions.

4 20. I agree that this written plea agreement contains all the terms and conditions
5 of my plea and that promises made by anyone (including my attorney) that are not
6 contained within this written plea agreement are without force and effect and are null and
7 void.

8 21. I am satisfied that my defense attorney has represented me in a competent
9 manner.

10 22. I am fully capable of understanding the terms and conditions of this plea
11 agreement. I am not now on or under the influence of any drug, medication, liquor, or
12 other intoxicant or depressant, which would impair my ability to fully understand the terms
13 and conditions of this plea agreement.

Factual Basis

I further agree that the following facts accurately describe my conduct in connection with the offenses to which I am pleading guilty and that if this matter were to proceed to trial the government could prove these facts beyond a reasonable doubt:

On December 3, 2017, near Nogales, in the District of Arizona, I was on duty and acting as a United States Border Patrol Agent. On that day, I arrested A.-L.A. for unlawful entry into the United States. During my apprehension of A.L.-A., I intentionally struck him with an unreasonable amount of force. My actions when I struck A.L.-A. were not justified and violated his rights protected by the Constitution of the United States.

8/8/19

Matthew Bowen
Defendant

DEFENSE ATTORNEY'S APPROVAL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the

1 constitutional and other rights of an accused, the factual basis for and the nature of the
2 offense to which the guilty plea will be entered, possible defenses, the consequences of the
3 guilty plea (including the maximum statutory sentence possible), and that the defendant is
4 waiving the right to appeal or otherwise challenge the conviction and sentence. I have
5 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
6 assurances, promises, or representations that are not contained in this written agreement
7 have been given to me or to the defendant by the United States or any of its representatives.
8 I have concluded that the entry of the plea as indicated above on the terms and conditions
9 set forth in this agreement are in the best interests of my client. I agree to make a bona fide
10 effort to ensure that the guilty plea is entered in accordance with all the requirements of
11 Fed. R. Crim. P. 11.

12

13

8-8-19

14

Date

15

16

GOVERNMENT'S APPROVAL

17

18

19

20

21

22

23

24

25

26

27

28

S. Chapman
Sean Chapman, Esq.
Attorney for Defendant

MICHAEL BAILEY
United States Attorney
District of Arizona

Monica E. Ryan
MONICA E. RYAN
Assistant U.S. Attorney

8/8/19